



## <論説> THE PROPERTY LAW OF THE PEOPLE'S REPUBLIC OF CHINA

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# THE PROPERTY LAW OF THE PEOPLE'S REPUBLIC OF CHINA

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There is here provided a full English translation of the Property Law of the People's Republic of China (PRC), as adopted at the 5th Session of the 10th National People's Congress of the PRC on 16 March 2007, and as effective from 1 October 2007.<sup>1</sup> The Property Law pertains to the sphere of private law rights and obligations, and, as such, it belongs to the system of civil law that forms an integral part of the socialist legal order that has come to be established in the PRC as during the era of political and economic reform that began in December 1978. The translation of the Property Law, as it is presented, is by way of a preliminary to what the authors envisage as a critical exposition of its component elements. This critical exposition of the Property Law, together with the translation itself, will stand as a further stage in the on-going study by the authors of the civil law system in the PRC and as complementary to their work on tort law and contract law.<sup>2</sup>

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1 The publication details for the Property Law in the official and authoritative version on which the present translation is based are as follows: Decree No. 62 of the President of the People's Republic of China: Property Law of the People's Republic of China. *Zhonghua Renmin Gongheguo Zhuxi Ling (di 62 hao): Zhonghua Renmin Gongheguo Wuquan Fa. The Gazette of the State Council of the People's Republic of China (Zhonghua Renmin Gongheguo Guowuyuan Gongbao)*, 20 May 2007, Issue No. 14, Serial No. 1229, pp. 4-18.

2 Charles Covell and Shahzadi Covell: 'The Tort Law of the People's Republic of China', *Journal of International Public Policy*, 37 (February 2016), pp. 23-51; 'The Contract Law of the People's Republic of China', *Tsukuba Journal of Law and Politics*, 66 (March 2016), pp. 17-56.

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PROPERTY LAW OF THE PEOPLE'S REPUBLIC OF CHINA

As adopted at the 5th Session of the 10th National People's Congress of the People's Republic of China on 16 March 2007, and as effective from 1 October 2007

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## PART 1: GENERAL PROVISIONS

### Chapter 1: Fundamental Principles

#### Article 1:

This law is drawn up with the intention to maintain the system of national economy and the socialist market economic order, as through explicating the principles of property ownership, giving full realization to the concept of property, and protecting proprietors and their rights as to the ownership of property, as in accordance with the State Constitution.

#### Article 2:

The law has application to civil relationships involving the ownership and the use of property.

For the purposes of this Law, the term 'property' comprehends movable property and real property. The laws stipulating property rights are to be observed.

For the purposes of this Law, the term 'property rights' relates to the exclusive rights belonging to proprietors to exercise direct control over property, as in respect of such

property rights as ownership rights, usufructuary rights, and security rights.

#### Article 3:

During the primary stage of socialism, the state shall maintain a basic economic system where public ownership is dominant, but with diverse modes of ownership co-existing together.

The state shall consistently consolidate and develop the public sector of the national economy, while at the same time promoting, supporting and directing the development of the non-public economic sectors.

The state shall give effect to the socialist market economic order, through providing for the equal status and rights in law of all market economic actors.

#### Article 4:

The property rights of the state, the collectives, individuals and other proprietors shall be protected by the laws, and shall not be violated by any organizations or individual parties.

#### Article 5:

The forms and subject-matters of the various property rights shall be as determined by the laws.

#### Article 6:

The creation, modification, transference, and termination of rights in real property shall be registered in accordance with the applicable laws and administrative regulations. The creating and transfer of rights in movable property shall take place through delivery arrangements conforming with the applicable laws and administrative regulations.

#### Article 7:

The acquisition and exercise of property rights shall be consistent with the laws and with social ethical norms, and they shall not be detrimental to the public interest or to the legitimate rights and interests of other parties.

Article 8:

All laws otherwise stipulating property rights are to be observed.

Chapter 2: Creation, Modification, Transference, and Termination of Property Rights

Section 1: Registration of Real Property

Article 9:

Unless otherwise laid down by law, the creation, modification, transference and termination of rights in real property shall take effect in consequence of the registration of the same as in accordance with the laws.

The rights held by the state with respect to the ownership of natural resources may be exempt from the requirement of registration.

Article 10:

Rights in real property are to be registered with the Registration Departments having jurisdiction where the properties concerned are located.

The state shall maintain a uniform system of real property registration, and with the jurisdictional scope, departmental organization and procedures for this to be determined through the applicable laws and administrative regulations.

Article 11:

On application for the registration of real property, the parties concerned shall provide evidentiary materials establishing ownership, in addition to other requisite materials as indicating the location and extent of the property at issue.

Article 12:

The Registration Departments shall discharge the following duties:

- i. The checking and inspection of the evidentiary materials on ownership and other requisite materials as submitted by applicants.
- ii. The conducting of inquiries with applicants as relating to registrations.
- iii. The completion of registrations in line with the relevant facts and in due time.

iv. The fulfilling of other duties as set out in the laws and administrative regulations.

In cases where additional evidentiary materials are necessary in connection with the registration of real property, the Registration Departments may require that applicants should provide these and may conduct on-site inspections of the properties concerned.

#### Article 13:

The Registration Departments are barred from undertaking the following activities:

- i. The requiring of the evaluation of real property.
- ii. The requiring of repeat registrations based in the claim of annual inspection powers.
- iii. The commission of acts going beyond the authority of Registration Departments.

#### Article 14:

The creation, modification, transference and termination of rights in real property shall take effect conditional on their due registration, as where this is required.

#### Article 15:

Contracts entered into by parties of interest as in regard to the creation, modification, transference and termination of rights in real property shall take effect immediately upon their execution, unless otherwise provided for by the laws or by the terms of the contracts concerned. The validity of such contracts shall not be affected if the registration of the property rights at issue has not been completed.

#### Article 16:

The Registry of Real Property shall stand as the point of evidentiary reference for the determination of the ownership rights pertaining to property, and the substance of these, and it shall be maintained by the relevant Registration Departments.

#### Article 17:

The ownership certificates for real property shall stand as the evidentiary material confirming the rightful ownership of proprietors as to real property. The details for real property recorded in ownership certificates should be consistent with those set out in the

corresponding registration submission documents, but where not, the latter are to have application.

**Article 18:**

The Registration Departments are to assist proprietors and other interested parties as to the inspection and copying of the data on real property registration.

**Article 19:**

Where interested parties consider that the details contained in the Real Property Registry have been wrongly entered, they may apply to have corrections entered in the Registry. Subject to the proprietors concerned agreeing with such corrections as drafted, and the applicant parties having evidence to prove the presence of mistakes as to the registration details at issue, the Registration Departments are to make the corrections as requested.

In the event that proprietors do not agree with the terms of proposed corrections to registration details, they may submit their objections to these. Where the objections to corrections to registration details are upheld by Registration Departments, the applicant parties concerned may file a suit before the People's Courts within 15 days of the recording of the said objections, in the absence of which suit their proposals for corrections shall lapse. Where proprietors suffer material injury through the inappropriate submission of corrections as to registration details, the proprietors may seek damages from the applicant parties.

**Article 20:**

In circumstances where interested parties enter into contracts as to the purchase or sale of homes or other real property, they may, in order to give effect to the property rights at issue, apply for the pre-notice registration of these to the appropriate Registration Departments as in line with the terms of the contracts. On the completion of the pre-notice registrations, the disposal of such real property without the consent of the proprietors shall not take effect as in regard to the property rights concerned.

On the issuing of pre-notice registrations, the rights of creditors shall lapse, and with the pre-notice registrations being rendered null and void if no application is made for the



registration of the real property at issue as within three months from the date of their acceptance.

#### Article 21:

Where parties provide false information, as pertaining to the registration of real property rights, and this causes injury to other parties, the parties at fault are liable to make compensation.

In conditions where Registration Departments cause injury to parties in consequence of errors made with the real property registration procedures, the Registration Departments concerned are liable to make compensation to the injured parties and to pursue the parties responsible for the mistakes.

#### Article 22:

The costs for the registration of real property shall be determined as to the properties concerned as individual units, and not in reference to their capacity, size or value. The tariff for registration charges shall be set by the relevant department of the State Council acting in conjunction with the department responsible for pricing affairs.

### Section 2: Delivery of Movable Property

#### Article 23:

Save where otherwise provided for by the laws, the creation and transfer of rights in movable property shall take place subsequent to the delivery of the movable property concerned.

#### Article 24:

The creation, modification, transfer and termination of property rights in regard to unregistered water craft, airborne craft and motor vehicles shall not affect bona fide third parties.

#### Article 25:

Where proprietors are already in possession of movable property prior to the creating

and transfer of the rights in the same, the property rights shall be effective on the validation of the legal transactions involved.

Article 26:

Where third parties have been in possession of movable property prior to the creating and transfer of the rights in the same, the actual delivery of the movable property at issue may be substituted for by the transfer of the right to require the third parties concerned to return the movable property to the parties to which delivery is due.

Article 27:

The assignor parties shall deliver movable property to the assignee parties in cases involving the assignment of rights in the said movable property; but if the parties form an agreement by which the assignor parties remain in continuous possession of the movable property, the rights in the property shall become effective on the validation of such an agreement.

Section 3: Miscellaneous

Article 28:

The creation, modification, transference and termination of property rights through the acts of the Recorders of the People's Courts and the Arbitration Commissions, and the decisions on expropriation by the departmental authorities of the People's Government, shall become effective from the date of the acts of the Recorders and the expropriation decisions concerned.

Article 29:

The property rights acquired through inheritance or gift shall take effect from the time of the bestowing of the inheritance or gift.

Article 30:

The creation and termination of property rights as arising from such acts as the lawful construction and demolition of buildings shall become valid and effective following the

performance of such acts.

#### Article 31:

The disposition of property rights held in consequence of the provisions of Articles 28–30 shall not become effective where no registration is made of the property rights, and it is required that the property rights in question should be registered.

### Chapter 3: Protection of Property Rights

#### Article 32:

In cases where property rights are infringed, proprietors may address the issues arising from such infringements through the procedures of conciliation, mediation, arbitration, or litigation.

#### Article 33:

In cases of dispute regarding the ownership rights pertaining to property, and the substance of these, the interested parties may seek a formal confirmation of such rights.

#### Articles 34:

In cases where parties without lawful title maintain possession of real property or movable property, the rightful proprietors may require the restoration to them of such property.

#### Article 35:

In cases where property rights are infringed or considered likely to be infringed, the proprietors concerned may require the removal of the encumbrances or dangers as threatening such infringements.

#### Article 36:

In cases where there is damage done to real property or movable property, the proprietors concerned may require that the properties at issue should be repaired, remade, replaced or restored.

**Article 37:**

In cases where proprietors suffer injury through the infringing of their property rights, the proprietors may require that the infringing parties should pay damages or bear other civil liabilities.

**Articles 38:**

The procedures and arrangements for the protection of property rights described in this Chapter may be availed of separately, or in combination, as according to the circumstances of property rights violations.

In cases such that the violation of property rights involves the breaching of administrative regulations, the responsible parties, as in conformity with the laws, are to assume liability under administrative law in addition to civil liabilities. In the event that property rights violations constitute the commission of some or other crime, then the parties concerned are to be investigated for criminal responsibility as in accordance with the laws.

## **PART 2: OWNERSHIP**

### **Chapter 4: General Principles**

**Article 39:**

Proprietors shall have the right to possess, use, derive profits from, and dispose of their real property and movable property, as in accordance with the laws.

**Article 40:**

Proprietors shall have the right to create usufructuary rights and security rights with regard to their real property and movable property. The holders of usufructuary rights and security rights shall not exercise their rights to the detriment of the rights and interests of proprietors.

**Article 41:**

No organizations or individuals shall be allowed to acquire ownership of real property or movable property that falls within the exclusive ownership of the state, as in accordance

with the laws.

#### Article 42:

In furtherance of the public interest, the collectively owned land, dwellings and other real property owned by organizations or private individuals may be expropriated as in accordance with the laws and the due legal procedures.

With the expropriation of collectively owned land, fees are to be paid as compensation for the expropriated land, resettlement subsidies, payments for the fixtures and crops, and the social welfare contributions of the farmers whose land is expropriated, as in order to maintain their existing standard of living and to safeguard their lawful rights and interests.

In cases where dwellings and other real property are expropriated, compensation is to be paid according to law for the purposes of building demolition and resettlement such as to maintain the lawful rights and interests of the parties made subject to expropriation orders. In cases where the residential homes of individuals are expropriated, the residence conditions of the parties made subject to expropriation orders are to be guaranteed.

No organizations or individuals are to withhold, misappropriate, embezzle or privately allocate the compensation monies paid in consequence of expropriation.

#### Article 43:

The state shall adopt special protection measures regarding agricultural land, and to restrict the utilization of agricultural land for the purposes of construction such as to control the total amount of land available for construction. No expropriation of collectively owned land in this context is to take place in the absence of lawful authority and the observance of due legal procedure.

#### Article 44:

For the purposes of responding to emergencies and providing disaster relief, real property and movable property belonging to organizations and individuals may be expropriated as in accordance with the laws and the due legal procedures. The said properties are to be returned to their rightful owners, as when appropriate, and compensation is to be paid to the owners in the event that the properties are damaged or destroyed.

## Chapter 5: State Ownership, Collective Ownership, and Individual Ownership

### Article 45:

Properties that are subject to state ownership, as according to law, are owned by the state in the sense of being owned by the whole people.

The State Council is to exercise on behalf of the state the rights of ownership as pertaining to state-owned property, unless there are legal provisions that stipulate to the contrary.

### Article 46:

Mineral resources, waterways, and sea areas are subject to state ownership.

### Article 47:

Urban lands are owned by the state; and rural land and land on the outskirts of cities shall be owned by the State, as in accordance with the laws.

### Article 48:

Natural resources such as forests, mountains, grasslands, unclaimed land, and beaches are owned by the state, with the exception of the natural resources that are subject to collective ownership as in accordance with the laws.

### Article 49:

Wild animals and plants are owned by the state as in accordance with the laws.

### Article 50:

The radio spectrum resources are owned by the state.

### Article 51:

Cultural relics belonging to the nation are owned by the state as in accordance with the laws.

**Article 52:**

Resources pertaining to national defence are owned by the state.

Public infrastructure facilities such as the railways, roads, electric power, communications, and oil and gas pipe connections are lawfully owned by the state.

**Article 53:**

The relevant departmental authorities of the state shall be empowered to take possession of, use, and dispose of the real property and movable property subject to their direct control, as in accordance with the laws and the applicable administrative regulations laid down by the State Council.

**Article 54:**

Institutions pertaining to the state are to have the right to possess, use, derive profits from, and dispose of the real property and movable property subject to their direct control, as in accordance with the laws and the applicable administrative regulations laid down by the State Council.

**Article 55:**

Enterprises that are funded by the state are to be subject to the State Council and the relevant departmental authorities of the Local People's Governments, and with the latter having the rights and obligations of capital investors as in accordance with the laws and administrative regulations.

**Article 56:**

Property subject to state ownership is to be protected by the laws, and it is not to be occupied, divided up, withheld, or damaged by any organizations or individuals.

**Article 57:**

The departmental authority of the state and its personnel as responsible for the management and supervision of state-owned properties shall, in accordance with the laws, reinforce the administration thereof, promote the virtues of prudent savings, and safeguard

them from damage.

In cases where losses are caused to state-owned properties through malpractice and the abuse of powers, the parties responsible shall bear appropriate legal liabilities. In cases where damage is caused to state-owned properties through underpricing as with transfers, private apportionments, discretionary guarantees in breach of the administrative regulations applying to enterprise reform, mergers and partitions, and other enterprise transactions, the parties responsible shall bear the appropriate legal liabilities.

Article 58:

Real property and movable property as subject to collective ownership shall include:

- i. Land, forests, mountains, grasslands, unclaimed land and beaches.
- ii. Buildings, production machinery, and land cultivation and water power facilities.
- iii. Education, scientific, cultural, health and gymnasium facilities.
- iv. Other forms of real property and movable property as subject to collective ownership.

Article 59:

Real property and movable property as subject to ownership by farming collectives are owned by their various members on a collective basis.

The subject-matters specified below are to be decided and acted on jointly by the members of the relevant collectives as in accordance with the due legal procedures:

- i. Land contract arrangements and the sub-contracting of lands to organizations and individuals not belonging to collectives.
- ii. The assignment of contracted lands among contractors having the powers of land management.
- iii. The utilization and distribution of fees, as with those to do with land compensation.
- iv. The transference of ownership in enterprises whose capital is subscribed by collectives.
- v. Other subject-matters as based in and required by the laws.

Article 60:

The ownership rights in lands, forests, mountains, grasslands, unclaimed land, and beaches, as subject to collective ownership, are to be exercised in accordance with the



following provisions:

- i. In cases where collective ownership pertains to village farmers, the rights of ownership shall be exercised by the collective economic organizations of the villages or by villager committees, as on behalf of the collectives concerned.
- ii. In cases where collective ownership pertains to two or more village farmers, the rights of ownership shall be exercised by the collective economic organizations of the villages or by committee groups of villagers, as on behalf of the collectives concerned.
- iii. In cases where collective ownership pertains to the farmers of townships, the rights of ownership shall be exercised by the collective economic organizations of the townships, as on behalf of the collectives concerned.

#### Article 61:

The township collectives shall exercise the right to possess, use, derive profits from, and dispose of the real property and movable property subject to their collective ownership, as in accordance with the laws and administrative regulations.

#### Article 62:

The collective economic organizations, villager committees and groups of villagers are to make public to the members of collectives all details concerning the status of the real property and movable property subject to their collective ownership, as in accordance with the laws and administrative regulations and with the rules and articles of association of the village collectives concerned.

#### Article 63:

Properties that are subject to collective ownership shall be protected by the laws, and shall not be occupied, divided up, withheld, or damaged by any organizations or individuals. In cases where the decisions made by collective economic organizations, villager committees, or other representative bodies infringe on the lawful rights and interests of the members of collectives, the members so aggrieved may seek the reversal of the said decisions through the People's Courts.

**Article 64:**

Individuals shall exercise ownership rights with respect to such real property and movable property as their legitimate income, houses, personal goods, production equipment and raw materials.

**Article 65:**

The legitimate savings, investments and profits of individuals are to be protected by the laws.

The state shall protect the right of inheritance and the other legal rights and interests of individuals.

**Article 66:**

The legitimately held property of individuals is to be protected by the laws, and it shall not be occupied or damaged by any organizations or individuals.

**Article 67:**

The state, the collectives and individuals may contribute to the establishing of limited liability corporations, joint stock corporations, or other forms of enterprise, as in accordance with the laws. In cases where real property or movable property subject to the ownership of the state, the collectives or individuals is invested in enterprises, the capital investors concerned shall, to the extent of their invested capital, exercise the rights and discharge the obligations as pertaining to the funds of the enterprises in question, the major management decisions concerning them and the disposition of the managerial personnel.

**Article 68:**

As legal person entities, the enterprises shall have the right to possess, use, derive profits from, and dispose of their real property and movable property as in accordance with the laws and administrative regulations, and with their articles of association.

Legal person entities other than enterprises shall exercise the right to their real property and movable property as in accordance with the laws and administrative regulations, and with their articles of association.

Article 69:

The real property and the movable property as subject to the ownership rights belonging to social organizations are to be protected by the laws.

Chapter 6: Ownership Rights as to Apartment Buildings

Article 70:

Proprietors may enjoy ownership rights in respect of such exclusive sections of apartment buildings as residential apartments or commercial premises, and co-ownership and common management rights as in respect of such sections of apartment buildings that are subject to joint rather than exclusive ownership.

Article 71:

Proprietors may exercise the right to possess, use, derive profits from, and dispose of the exclusive sections of apartment buildings subject to their ownership, as provided that the exercise of these rights does not endanger the security of the apartment buildings concerned or involve damage to the legitimate rights and interests of other owners.

Article 72:

Proprietors shall exercise the rights, and bear the obligations, relating to the sections of apartment buildings that are subject to joint ownership, and they are not able to relinquish their obligations through the waiver of their rights.

In cases where proprietors transfer residential apartments or commercial premises within apartment buildings, as subject to joint ownership rights, their co-ownership and common management rights therein are thereby transferred.

Article 73:

The roadways within the zoned grounds of apartment buildings are to be subject to the joint ownership of the proprietors resident therein, with the exception of those pertaining to urban public roads. The green fields within the zoned grounds of the apartment buildings are to be subject to the joint ownership of the resident proprietors, with the exception of those pertaining to urban public green fields or to individuals. Proprietors may own on a joint

basis other public sites and facilities, as well as property service premises.

Article 74:

The parking lots and garages within the zoned grounds of apartment buildings are to serve the needs of proprietors, and the ownership of these facilities is to be determined by such transactions as sale, gift or leasing as entered into by the parties concerned.

The parking lots and garages situated on jointly owned roads, or elsewhere, are subject to the co-ownership rights of the proprietors concerned.

Article 75:

Proprietors may convene general meetings and elect representative committees.

The relevant departmental authorities of the Local People's Governments are to provide advice and guidance as to the convening of the general meetings of proprietors and the elections to their committees.

Article 76:

Proprietors shall, as in accordance with the laws, decide on the subject-matters stated below:

- i. The formulation and alteration of the procedural rules for the general meetings of proprietors.
- ii. The formulation and alteration of the regulations regarding the management of apartment buildings and connected facilities.
- iii. The election of the members of the committees of proprietors.
- iv. The employment and dismissal of the property service staff and other management personnel.
- v. The raising and disposal of funds relating to the maintenance of buildings and their connected facilities.
- vi. The repair, restoring and reconstruction of buildings and their connected facilities.
- vii. Other important events pertaining to the rights of co-ownership and common management.

Decisions in regard to the subject-matters referred to in sections 5 and 6 above shall

require the consent of the proprietors whose exclusive sections of apartments buildings account for more than two-thirds of their overall area, and whose number account for more than two-thirds of the total number of proprietors. Decisions regarding the other subject-matters shall be made with the consent of the proprietors whose exclusive sections of apartment buildings account for more than one half of their overall area, and whose number account for more than one half of the total number of proprietors.

Article 77:

Proprietors are not permitted, as in violation of the laws and administrative regulations, and the applicable management rules, to convert residential apartments into commercial premises. Proprietors are required to observe the laws and administrative regulations, and the applicable management rules, and to obtain the consent of other interested proprietors before converting residential apartments into commercial premises.

Article 78:

The decisions made at the general meetings of proprietors or by their committees shall be binding on proprietors.

In cases where the decisions made at the general meetings of proprietors or by their committees violate the legitimate rights and interests of proprietors, the aggrieved proprietors may apply for a revocation of the decisions concerned through the People's Courts.

Article 79:

The maintenance funds for apartment buildings and connected facilities shall be co-owned by all proprietors, and these are to be used for the maintenance of such common-use service facilities as elevators and water tanks. The arrangements as established for the raising and disposal of maintenance funds shall be made public.

Article 80:

The apportionment of fees and the distribution of profits relating to apartment buildings and connected facilities shall be in accordance with the relevant official stipulations as

appropriate, or they shall be determined as in proportion to the extent of the exclusive sections subject to the ownership rights of proprietors in the absence of official stipulations.

**Article 81:**

Proprietors may, and acting at their own discretion, manage apartment buildings and connected facilities for themselves, or they may entrust the tasks involved to property service companies or to other management personnel.

Proprietors shall have the right to make alterations regarding the terms of their employment of property service companies and other management personnel.

**Article 82:**

Property service companies and other management personnel shall, as in accordance with the terms of their authorization by proprietors, administer apartment buildings and connected facilities within the zoned grounds of apartment buildings, and as subject to the supervision of the proprietors.

**Article 83:**

Proprietors are to abide by the laws and administrative regulations, and by the applicable management rules as stipulated through the meetings of proprietors.

The meetings of proprietors and their committees shall have the right to request the malefactor parties concerned to desist from violations, set right the effects thereof, remove impediments and make compensation in regard to all of their actions that involve the infringing upon the legal rights and interests of other parties: such as the deliberate dumping of garbage, the obstruction of passage-ways, the emission of substances causing air pollution, the creating of noise, the unauthorized raising of animals, the unauthorized carrying out of construction work, and the refusal to pay property service management fees. Proprietors may, on the basis of the laws, seek redress through the People's Courts as in regard to actions involving the violation of their legitimate rights and interests.

## Chapter 7: Neighbourhood Relations

### Article 84:

The owners of real property shall maintain orderly relations with their neighbours, so as to promote practical convenience, good living among people, the spirit of unity and mutual assistance, and fairness and reasonableness in conduct.

### Article 85:

The organization of neighbourhood relations shall be in accordance with the terms of the relevant laws and administrative regulations if appropriate, or, otherwise, as in accordance with established local practice.

### Article 86:

Proprietors having ownership rights in real property are to provide access for neighbours with regard to the water supply and drainage facilities, as where this is necessary.

Natural running water shall be distributed on a reasonable basis among neighbours, and it shall be drained in line with the natural course of the water supply.

### Article 87:

The owners of real property are to provide access for neighbours who are compelled to use their land for passage, as where this is necessary.

### Article 88:

The owners of real property are to provide access for neighbours as to their land for construction purposes and for the repair of buildings and the installation of such things as wiring, electrical cables, piping, and heating and gas pipes, as where this is necessary.

### Article 89:

The construction of buildings shall be in accordance with the applicable administrative regulations as regarding construction planning, and this is not to impact adversely on the ventilation, views and light of the neighbouring buildings.

Article 90:

The owners of real property are not to discharge gas pollutants, water pollutants or solid waste, or cause nuisance to others by noise, light or magnetic wave radiation, as contrary to the laws.

Article 91:

The owners of real property under construction shall not endanger the security of neighbouring properties while excavating land, constructing buildings, putting down pipes and lines, and installing equipment. The owners of neighbouring real property shall have the right to request the owners of the real property under construction to provide appropriate guarantees.

Article 92:

The owners of real property making use of the real property of neighbours, in connection with the water supply, drainage, traffic and the putting down of pipes and lines, are required to make every effort not to do harm to the said neighbours, and they are required to pay appropriate compensation where damage is caused.

Chapter 8: Joint Ownership

Article 93:

Real property and movable property may be subject to joint ownership by two or more institutions or individuals. There are two kinds of joint ownership: co-ownership by shares and common ownership.

Article 94:

Co-owners by shares shall enjoy the joint ownership of real property and movable property in proportion to the extent of their respective share-holdings.

Article 95:

Common owners shall enjoy full joint ownership of the real property and movable property concerned.



Article 96:

Co-owners shall carry out management responsibilities with regard to real property and movable property through agreements among themselves. Each of the co-owners shall enjoy the rights and bear the obligations as relating to the management of their jointly owned properties.

Article 97:

Unless otherwise agreed by the co-owners concerned, repairs made to real property and movable property, as subject to joint ownership by shares, are to be carried on with the consent of the co-owners whose shares account for two-thirds of the total shares in the property.

Article 98:

The management fees and other charges due for jointly owned property shall be in accordance with prior agreements among co-owners; or, in the absence of agreements, co-owners by shares shall bear responsibility in proportion to their respective share-holdings whereas common owners shall bear responsibility on a joint basis.

Article 99:

In circumstances where co-owners agree that no divisions regarding real property or movable property subject to joint ownership are to be made in order to maintain the co-ownership relationship, such agreements are to be respected. However, co-owners may apply to divide up property subject to joint ownership should they wish to do so for compelling reasons. If there are no explicit agreements regarding such divisions, co-owners by shares may at any time require that a division be made; while common owners may effect such divisions where the basis for joint ownership lapses and there are important reasons for this. Where divisions result in losses for some or other co-owners, remedies are to be provided as appropriate.

Article 100:

Co-owners shall determine the procedures for the division of real property and movable

property subject to joint ownership through consultation. In cases where no agreement is reached as to this and where the real property or movable property concerned is capable of being divided and will not depreciate in value through division, the practical costs of the division are to be shared. In cases where property can be divided only with difficulty or its value will depreciate through division, the division can be made on the basis of the proceeds obtained as the result of the auction or sale of the jointly owned property, or through reimbursements based in the estimated price of the property concerned.

With defective real property and movable property acquired by co-owners in consequence of acts of division, the other co-owners are to share the losses resulting from this.

#### Article 101:

Co-owners by shares shall have the right to transfer their respective share-holdings in the real property subject to joint ownership, but the other co-owners are to have the pre-emptive right to acquire the shares put up for transfer if all other conditions are favourable.

#### Article 102:

Co-owners enjoy the rights of joint creditors and bear joint liability for debts in regard to real property and movable property subject to joint ownership, unless otherwise laid down in the laws or the interested third parties accept that the co-owners do not bear joint creditor rights or joint liability for debts. Save where otherwise provided for, co-owners by shares are to enjoy joint creditor rights and bear joint liability for debts in proportion to the extent of their share-holdings; whereas common owners are to bear creditor rights and liability for debts on a joint basis. Co-owners by shares who discharge joint liabilities for debts as in excess of their obligation by share proportion are entitled to seek appropriate compensation from the other co-owners.

#### Article 103:

In the case that there is no agreement, explicit or implicit, as to whether joint ownership is based in joint ownership by shares or common ownership, the co-owners shall be regarded as co-owners by shares, save in circumstances where the co-owners are bound

together through family relationships.

Article 104:

In the absence of applicable agreements, the shares held by co-owners in real property and movable property shall be determined as relative to the respective capital investment contributions of the co-owners, and, where no such determination can be made, the shares are to be construed as equal.

Article 105:

The provisions of this Chapter shall have application where two or more organizations or individuals hold usufructuary rights or security rights as on a joint basis.

Chapter 9: Special Regulations on Ownership Acquisition

Article 106:

In cases where real property or movable property is transferred by parties that are lacking the competence to do so, the lawful owners shall have the right to recover the property concerned. Except where otherwise provided for by the laws, the transferees shall acquire ownership of such real property or movable property subject to the following conditions:

- i. The transferees assume that the transfer is legitimate.
- ii. The property at issue is transferred with a reasonable price.
- iii. The transferred property is registered in accordance with the relevant laws, or, where no registration is required, it is delivered to the transferees.

In cases where transferees acquire the ownership of real property or movable property in accordance with the above conditions, the original bearers of the ownership rights shall have the right to claim damages in respect of the parties responsible for the unauthorized disposal of the property.

The above provisions apply to parties who have obtained the property rights concerned in good faith.

Article 107:

Lawful owners, and other legitimate proprietors, have the right to claim and recover movable property that has been stolen or lost. In cases where movable property has been transferred or appropriated by other parties through transfer, the lawful owners of the stolen or lost property shall have the right to claim damages against the parties responsible for the unauthorized disposal of the property concerned. If the lawful owners claim movable property within two years from the date on which they know, or should have known, of the loss of the movable property concerned, and the transferee parties have purchased such property through auction or from legitimate vendors, the lawful owners shall make over to the transferees concerned the amount that the latter originally paid for it, as for the purposes of the repossession of the property. In consequence of the lawful owners so compensating the transferee parties as to their expenses, they are entitled to recover the costs incurred with the compensation payments from the parties that had first wrongfully disposed of the property at issue.

Article 108:

The original rights in stolen or lost movable property shall lapse on its acquisition by legitimate assignees, except where the latter know or should have known about such rights.

Article 109:

Lost movable property shall be returned to the lawful owners on its being recovered. The party who recovers the lost property is to notify the lawful owners to collect it, or to submit it to the appropriate Public Security Department.

Article 110:

The Public Security Departments receiving lost movable property shall notify the lawful owners to collect the lost property in a timely manner, if they know the identity of the lawful owners. Otherwise, a lost property notice is to be issued within a reasonable time.

Article 111:

Lost movable property is to be held in an appropriate manner by the parties recovering

it prior to their submitting it to the Public Security Departments concerned, as well as by the latter before its being collected and returned. In cases where damage or deterioration is caused to the lost property as the result of deliberate and serious negligence, the parties concerned shall bear civil liabilities.

Article 112:

On the recovery of lost movable property, the lawful owners shall pay the costs for the safekeeping of the lost property to the parties that have recovered the lost property or to the receiving Public Security Departments concerned.

The lawful owners are to pay the recovering parties any rewards as announced in connection with the missing property.

In cases where the parties recovering lost property misappropriate the same, the parties concerned shall be disqualified from claiming safe-keeping fees and rewards, or from requiring the lawful owners to discharge any obligations promised in connection with recovery.

Article 113:

Lost movable property shall fall under the ownership of the state if it is not claimed within six months of the date of issue of the relevant lost property notice.

Article 114:

Where materials are recovered as flotsam and jetsam, or having been buried or hidden, the relevant administrative regulations applying to such forms of property are to apply. Where there are stipulated different applicable provisions in the Law on the Protection of Cultural Relics,<sup>3</sup> these provisions shall be complied with.

Article 115:

Where lost movable property is transferred, the property associated with it is also

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3 The Law on the Protection of Cultural Relics of the People's Republic of China was originally adopted at the 25th Meeting of the Standing Committee of the 5th National People's Congress on 19 November 1982. It was subsequently amended in June 1991 and October 2002 as prior to the promulgation of the 2007 Property Law.

transferred thereby, unless as otherwise provided among the parties concerned.

Article 116:

The benefits pertaining to property that is stolen or lost shall be secured to the owners having legal title thereto. In cases where there are present holders of usufructuary rights as well as proprietors, the benefits pertaining to such property are to be secured to the holders of the usufructuary rights, but with the terms of separate agreements made as between the parties concerned having to be observed.

The lawful interests of the parties concerned are to be secured in accordance with the terms of the agreements; and with standard transactional practice to be followed where no agreements have been entered into.

## PART 3: USUFRUCTUARY RIGHTS

### Chapter 10: General Principles

Article 117:

The holders of usufructuary rights are to exercise the right to possess, use and derive profits from the real property or movable property as owned by other parties, as within the limits set down in the laws.

Article 118:

Organizations and individuals may possess, use and derive profits from natural resources as subject to the ownership of the state, or as owned by the state while being utilized by collectives, or as collectively owned, as according to the laws.

Article 119:

The state is to base the exploitation of natural resources in the system of compensation, except where otherwise provided for in the laws.

Article 120:

In exercising their rights, the holders of usufructuary rights are required to comply with

the administrative regulations regarding the protection and reasonable exploitation of natural resources. The actual lawful proprietors of the real property and movable property concerned are barred from interference with the exercise of the rights of the holders of the usufructuary rights.

Article 121:

In cases of the expropriation of real property or movable property resulting in the lapsing of usufructuary rights or as affecting their exercise, the holders of the usufructuary rights are to be entitled to appropriate compensation, as in accordance with the terms of Article 42 and Article 44 of this Law.

Article 122:

The legitimately acquired right to use sea areas is to be protected under the laws.

Article 123:

The rights relating to mineral extraction, mining, and drawing water, and the rights to engage in agricultural production and fishing in inland and coastal waters, are to be protected under the laws.

Chapter 11: Rights as to the Contractual Management of Land

Article 124:

Rural collective economic organizations are to adopt the dual operating procedure involving both centralized and decentralized elements, and as based in the household contract system.

The land contractual management system is to apply, as according to the laws, as in regard to farmlands, forestlands and grasslands owned by farmers on a collective basis and to land owned by the State but used by farmers on a collective basis, as well as to other categories of land holdings in use for agricultural purposes.

Article 125:

Under the land contractual management system, the contractors are to enjoy and

exercise the right to possess, use and derive profits from farmlands, forestlands and grasslands, and they are to have the right to engage in such modes of agricultural production as crop farming, forestry and animal husbandry.

Article 126:

Under the land contractual management system, the terms of contracts shall be thirty years for farmlands, thirty to fifty years for grasslands, and thirty to seventy years for forestlands. The terms of contracts for forestlands featuring specially designated forests may be extended subject to the approval of the appropriate Forestry Administration Department as coming under the State Council.

On the expiry of the terms of the contracts as specified in the above paragraph, the contractors concerned may continue with the land contractual management arrangement as according to the relevant administrative regulations.

Article 127:

The rights of contractors under the land contractual management system shall be effective as from the date of the contracts concerned.

The Local People's Governments above the County Level shall be responsible for the issuing of contractors with certificates confirming the conferring of the applicable land contractual management rights, as in the designated contexts such as forestlands and grasslands, and so serving to record and register these.

Article 128:

The rights of contractors under the land contractual management system may be transferred through such procedures as sub-contracting, exchange and assignment as in accordance with the relevant provisions of the Rural Areas Land Contract Law.<sup>4</sup> The term for the transference of the rights concerned may not exceed the remainder of the term of the original contract as such. The land as subject to contract is not to be used for purposes other than agricultural production, unless there is approval for this as in accordance with the laws.

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<sup>4</sup> The Rural Areas Land Contract Law of the People's Republic of China was adopted at the 29th Meeting of the Standing Committee of the 9th National People's Congress on 29 August 2002.



Article 129:

In cases where contractors exchange or assign their rights under the land contractual management system, the other parties may require the contractors to register the modification of the rights concerned with the relevant departmental authorities of the local People's Governments above the County Level, and with the rights at issue not to be prejudicial to the interests of legitimate third parties where no registration takes place.

Article 130:

Contract-awarding bodies may not make alterations to land under contractual management as within the term of contracts.

In cases where alterations to farmland or grassland subject to contractual management have to be made on account of their sustaining severe damage through natural disaster, the alterations are to be effected in accordance with the provisions of the Rural Areas Land Contract Law.

Article 131:

Contract-awarding bodies may not withdraw the land subject to the contractual management arrangement as within the term of contracts. If there are relevant provisions of the Rural Areas Land Contract Law applying otherwise, these are to be observed.

Article 132:

Contractors bearing rights under the land contractual management system are to receive compensation in the event of the expropriation of land as subject to contracts, as consistent with the terms of the 2nd Paragraph of Article 42 of this Law.

Article 133:

In cases where rural land is contracted out as wasteland through procedures such as bidding, auction and open consultation, the rights under land contractual management are to be transferred through assignment, mortgage or other procedures as provided for in the Rural Areas Land Contract Law and in the relevant administrative regulations of the State Council.

Article 134:

The relevant provisions of this Law are to have application to the contracting out of state-owned farmland.

Chapter 12: Rights as to the use of Land for Construction

Article 135:

The bearers of the right to the use of land for construction subject to state ownership shall be entitled to possess, use and derive profits from the said land, and they shall also have the right, in utilizing the land, to erect buildings and connected facilities.

Article 136:

The right to the use of land for construction is to comprehend the right to the use of the ground surface of the land and its underground strata. In cases where rights to the use of land for construction are created, these are not to infringe already existing usufructuary rights.

Article 137:

The right to the use of land for construction may be created by the procedures of assignment or transference.

Land maintained for industrial, commercial, tourism and entertainment purposes, and land with two or more designated purposes, is to be assigned through auction or bidding.

The creation of rights to the use of land for construction through transfer is to be severely restricted, and with the procedure of transfer being subject to the laws and administrative regulations as having application to land use.

Article 138:

In cases where the right to the use of land for construction is created through auction, bidding or agreement, the interested parties are to enter into a written contract on the assignment of the right concerned.

The assignment contracts creating the right to the use of land for construction are to include the following details:

- i. The names and domiciles of the parties.
- ii. The location and size of the land as subject to contract.
- iii. The areas occupied by buildings, structures and connected facilities.
- iv. The purpose of the land as subject to contract.
- v. The term of the period for the use of the land.
- vi. The fees relating to assignments and payments.
- vii. Dispute resolution procedures.

#### Article 139:

Applications for the registration of the right to the use of land for construction are to be submitted to Registration Departments, and with the right to become effective on the completing of registration. The Registration Departments shall issue authenticating certificates to the applicant parties as the holders of the rights to the use of land for construction.

#### Article 140:

Holders of the right to the use of land for construction are to utilize land in a reasonable manner, and they are not to make alterations to the designated purpose of the land without the approval of some appropriate administrative departmental authority acting in accordance with the laws.

#### Article 141:

Holders of the right to the use of land for construction shall pay assignment and other fees, as in accordance with the relevant laws and with the terms of the assignment contract agreements.

#### Article 142:

The ownership of the buildings, structures and connected facilities erected by holders of the right to the use of land for construction shall pertain to them, unless there is an evidentiary basis to exclude this.

Article 143:

Unless otherwise provided for by the laws, the holders of the right to the use of land for construction are empowered to transfer, exchange, gift or mortgage the right and to establish it for the purposes of capital investment.

Article 144:

In cases where the holders of the right to the use of land for construction elect to transfer, exchange, gift or mortgage the right, or constitute it as a capital investment contribution, the parties concerned are to form written contracts for these purposes. The terms of such contracts are not to provide for an extension of the time limit set for the original right to the use of land for construction.

Article 145:

In cases where the holders of the right to the use of land for construction elect to transfer, exchange, or gift the right, or constitute it as a capital investment contribution, the holders concerned are to apply for, and to register, the modification of the right with the appropriate Registration Departments.

Article 146:

In cases where the holders of the right to the use of land for construction elect to transfer, exchange, or gift the right, or constitute it as a capital investment contribution, the buildings, structure and connected facilities erected on the land are to be disposed of in accordance with the transaction entered into.

Article 147:

In cases where the buildings, structures and connected facilities established on land contracted for construction use are transferred, exchanged or gifted, or constituted as a capital investment contribution, the right to the use of the land concerned is to be disposed of in accordance with the transaction entered into.

**Article 148:**

In cases where it is necessary in the public interest to withdraw land, as held under the land contractual management system, prior to the expiry of the contracted for right to the use of land for construction, then compensation shall be provided with respect to the buildings and other real property erected on the land as in accordance with the provisions of Article 42 of this Law, and with the related transfer fees to be returned.

**Article 149:**

The term of the right to the use of land for construction, as to the building of houses, shall be renewed on its expiration on an automatic basis.

The term of the right to the use of land for construction, as for purposes other than the building of houses, shall be renewed on its expiration as in accordance with the relevant laws and administrative regulations. The ownership of the houses built on the land and other real property shall be based in relevant agreements among the parties, or, in the absence of such agreements, the provisions of the applicable laws and administrative regulations are to be followed.

**Article 150:**

Consequent on the lapsing of rights to the use of land for construction, the contract awarding parties are to cancel the registration of the rights through the relevant Registration Departments and to terminate the corresponding authenticating certificates.

**Article 151:**

In cases where land subject to collective ownership is used for construction, it is to be managed in accordance with the provisions of the Land Administration Law<sup>5</sup> and with other applicable laws and administrative regulations.

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<sup>5</sup> The Land Administration Law of the People's Republic of China was originally adopted at the 16th Meeting of the Standing Committee of the 6th National People's Congress on 25 June 1986. It was subsequently amended in December 1988, revised in August 1998 and amended again in August 2004, as prior to the promulgation of the 2007 Property Law.

## Chapter 13: Rights as to the use of Land for Residential Housing

### Article 152:

Holders of the right to the use of land for residential housing shall have the right to take possession of and to use land subject to collective ownership, and the right to build residential housing and connected facilities thereon.

### Article 153:

The Land Administration Law and other relevant laws and administrative regulations are to apply to the acquiring, exercise and assigning of the right to the use of land for residential housing.

### Article 154:

The right to the use of land for residential housing shall lapse in the event that the land concerned is destroyed in consequence of natural disaster. Persons who have thereby lost their residential housing shall be allocated residential housing on new land.

### Article 155:

In cases where the registered right to the use of land for residential housing lapses or is otherwise assigned, the registration of the alteration to or cancellation of the right is to take place within a due time limit.

## Chapter 14: Easements

### Article 156:

The holders of rights of easement shall have the right to increase the value of their own real property through the use of the real property owned by other parties as in accordance with the terms of their contractual agreements.

For the purposes of this Law, the real property owned by other parties, as referred to above, is the land available for easement, and the real property owned by the holders of rights of easement pertains to the land standing in need of easement.

**Article 157:**

To establish rights of easement, the parties concerned are to enter into a written contract of easement, the terms of which are to include the following:

- i. The names and titles and the domiciles of the parties concerned.
- ii. The location of the land for easement and that of the land being in need of easement.
- iii. The purpose of and the modalities for the use of the land for easement.
- iv. The term for the period of the use of the land for easement.
- v. The fees due and the terms for payment.
- vi. Dispute resolution procedures.

**Article 158:**

Easements are established from the date of the easement contract coming into effect. If required, applications for the registration of easements may be submitted to the appropriate Registration Departments; but if no registration takes place, the easement concerned is not to be detrimental to the interests of affected third parties.

**Article 159:**

Owners of the land available for easement shall allow holders of the right of easement to use the land concerned and without impediment to the exercise of this right, as in accordance with the terms of the applicable easement contract.

**Article 160:**

Holders of the right of easement are to use the land for easement in accordance with the terms of the easement contract, as to purpose and modalities for use, and to take reasonable steps to prevent curtailments of the property rights of the holders of the land for easement.

**Article 161:**

The terms of the period of easements as agreed by the parties concerned are not to go beyond the period of the terms set for such usufructuary rights as the right to land contractual management and the right to the use of land for construction.

Article 162:

In cases where owners of land exercising or facilitating easements establish rights to land contractual management or the right to the use of land for residential housing, the parties as the bearers of these rights are to continue to exercise or to facilitate the easements concerned.

Article 163:

In cases where rights to land contractual management, to the use of land for construction, or to the use of land for residential housing have been established, the owners of the land concerned may not proceed to establish easements without the consent of the holders of the usufructuary rights as referred to.

Article 164:

Easements may not be made subject to separate and individual assignments. Unless otherwise agreed in contracts, easements are to be transferred together with the rights to land contractual management and to the use of land for construction, as according to the laws.

Article 165:

Easements may not be mortgaged on a separate and individual basis. Thus easements are assigned directly where the rights to land contractual management and to the use of land for construction are mortgaged.

Article 166:

In cases where rights in land in need of easement are assigned as part of the right to land contractual management or the right to the use of land for construction, the assignee parties are to enjoy the easements concerned.

Article 167:

In cases where rights in regard to land for easement are assigned as part of the right to land contractual management or the right to the use of land for construction, the easements



are to be binding for the assignee parties.

#### Article 168:

Owners of land available for easement are to have the right to rescind easement contracts where these lapse in consequence of the following failings on the part of the bearers of the right of easement:

- i. The abuse of easements through the violation of administrative regulations or the terms of the easement contracts.
- ii. The non-payment of fees for easements being made use of after the issuing of two reminders for payment, and within a reasonable time limit as following the expiration of the scheduled term for payment.

#### Article 169:

The registration of alterations to or cancellations of easements shall be conducted within a due time period in cases where the easements are altered, assigned or lapse.

## PART 4: SECURITY RIGHTS

### Chapter 15: General Principles

#### Article 170:

Holders of security interests are to have priority as to the satisfaction of their claims in the event that debtor parties default, unless otherwise provided for in the laws.

#### Article 171:

In cases where creditor parties require guarantees as to the enforcement of their claims in contexts such as the placing of funds and the distribution of commodities, security interests may be established as in accordance with the terms of this Law and those of other laws.

In cases where third parties provide guarantees to creditors on behalf of debtor parties, the third parties may require the debtors to provide counter-guarantees. The stipulations in this Law and other laws as regarding guarantees have application to counter-guarantees.

Article 172:

In cases where security interests are established, contracts of guarantee are to be entered into as in accordance with the terms of this Law and other laws. Contracts of guarantee are contractual agreements that are subsidiary to principal contracts. In cases where principal contracts are rendered null and void, the contracts of guarantee thereby become null and void, unless otherwise provided for by the laws.

When contracts of guarantee become null and void, the defaulting parties concerned are to assume civil liability as in accordance with the extent of their faults.

Article 173:

The scope of security interests extends to such matters as the rights and interests of principal creditors, penalties, liquidated damages and charges for storage of pledged assets, and the enforcement of security interests, unless otherwise stipulated in the relevant contracts.

Article 174:

In cases of the destruction, loss or requisitioning of property subject to mortgage during the period of a suretyship, then the holders of the security interests are to have priority as to the satisfaction of their claims from the funds set aside for guarantee or from those set aside for compensation. The holders of security interests may also have these funds deposited prior to the expiry of the period set for their satisfaction.

Article 175:

In cases where third parties provide guarantees for creditors on behalf of debtors, the creditor parties may permit debtor parties to transfer their debts without the written consent of the third parties, but with the guarantor parties not here undertaking liabilities under the suretyship.

Article 176:

In cases where there exist both a suretyship and property security as regarding a single claim, the creditor parties are to enforce their claims according to the relevant agreements

when the debtor parties fail to discharge their debts. In cases where there exists no agreed form of suretyship but debtor parties provide property security, the creditor parties are to enforce their claims in reference to the property security. In cases where third parties provide property security, creditor parties may enforce their claims in reference to the property security or request the guarantor to assume liability under a suretyship arrangement. Third parties that assume suretyship liability are to have the right of recourse as in regard to the debtor parties.

#### Article 177:

Security interests are to be understood to have lapsed in the following circumstances:

- i. The principal debt lapses.
- ii. The security interest is enforced.
- iii. The creditor parties waive the security interest.
- iv. The lapsing of the security interest under other conditions as provided for by the laws.

#### Article 178:

This Law is to have precedence where there are discrepancies between itself and the Guarantee Law.<sup>6</sup>

### Chapter 16: Mortgage Rights

#### Section 1: General Mortgage Rights

#### Article 179:

In cases where debtor parties or third parties secure the rights of creditor parties, as to the performance of mortgage liabilities, with property where possession is not transferred, the creditor parties are to have priority as to the satisfaction of their claims from the property concerned, as where the debtor parties default.

The debtor parties or the third parties referred to in the above paragraph stand as the mortgagors; the creditor parties are the mortgagees, and the property provided as security is the mortgaged property.

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6 The Guarantee Law of the People's Republic of China was adopted at the 14th Meeting of the Standing Committee of the 8th National People's Congress on 30 June 1995.

Article 180:

The forms of property at the disposal of creditor parties or third parties that may be mortgaged are as follows:

- i. Houses and other structures established firmly on the land.
- ii. The right to the use of land for building purposes.
- iii. The right to the use of land as barren land contracted by the mortgagor through bidding, auction and negotiation.
- iv. Production equipment, raw materials, semi-finished products and finished products.
- v. Buildings, ships and aircraft under construction.
- vi. Vehicles for transportation.
- vii. Other forms of property as in accordance with the laws and administrative regulations.

Mortgagors may mortgage several or all of the forms of property referred to above at the same time.

Article 181:

Industrial enterprises, small industrial and commercial firms, and rural contractors may mortgage their existing and prospective production equipment, raw materials, semi-finished products and finished products according to agreements among the parties concerned. Creditor parties are to have priority as to the satisfaction of their claims from such property in the event of default on the part of debtor parties.

Article 182:

In cases where houses are mortgaged, the land use right as pertaining to the building allotments where stand the houses concerned is to be mortgaged at the same time. In cases where such a land use right is mortgaged, the houses fixed on the land are to be mortgaged at the same time.

When mortgagors fail to comply with the provisions as set out in the above paragraph, such property as is not mortgaged is to be considered as mortgaged at the same time.

Article 183:

The right to the use of land held by townships and village enterprises may not be

mortgaged on a separate basis. Thus in cases where factories and other infrastructure pertaining to townships and village enterprises are mortgaged, the right to the use of the land on which such buildings stand is required to be mortgaged at the same time.

#### Article 184:

The following property may not be mortgaged:

- i. The ownership rights in land.
- ii. The right to the use of land subject to the ownership of collectives, such as land under cultivation, and private plots and hills, unless otherwise provided for by the laws.
- iii. Educational facilities, the medical and health facilities of schools, kindergartens, hospitals, and other public sector institutions and organizations established in the interests of the public as well as other facilities established to serve the public welfare.
- iv. Property where the tenure of the right to its use is unknown or subject to dispute.
- v. Property that is sealed up, made subject to distraint orders, or placed under surveillance, and with lawful authority.
- vi. Other forms of property as stipulated in the laws.

#### Article 185:

Mortgagors and mortgagees are to conclude contracts of mortgage in written form.

A mortgage contract is to include the following elements:

- i. The type and the amount of the debt secured.
- ii. The time limit set for the discharging by debtor parties of their obligations.
- iii. The name, quantity, quality, condition, and the location of the mortgaged property, together with the ownership details pertaining to the right to the use thereof.
- iv. The extent of the guarantees provided by the mortgage agreement.

#### Article 186:

Mortgagors and mortgagees are not to stipulate that the ownership of the mortgaged property is to be transferred to the creditor parties in cases where the claim of the mortgagees are not satisfied prior to the maturation of the debts concerned.

**Article 187:**

In cases where a party mortgages assets as provided for in Article 180, Sections i-iii of this Law, or mortgages houses under construction as provided for in Article 180, Section v, the party concerned is required to register the mortgaged property and with the contract of mortgage becoming effective as of the date of registration.

**Article 188:**

In cases where a party mortgages movable property as provided for in Article 180, Section iv-vi of this Law, or mortgages ships and aircraft under construction as provided for in Article 180, Section v, the mortgage contract is to become effective as of the date of the registration. In cases where a party does not register the mortgaged property, then they may not defend themselves against the good faith claims of third parties.

**Article 189:**

In cases where industrial enterprises, small industrial and commercial firms, and rural contractors mortgage movable property as provided for in Article 181 of this Law, the mortgage contract is to become effective as of the date of registration. In cases where a party does not register the mortgaged property, then they may not defend themselves against the good faith claims of third parties.

In cases where parties register mortgaged property in accordance with Article 181 of this Law, then they may not defend themselves against the claims of third parties where the latter have made the due payments and obtained the mortgaged property through conventional commercial transactions.

**Article 190:**

In cases where mortgagors lease mortgaged property before the execution of the mortgage contract, the original contract of lease is to be continued in effect. In cases where mortgagors lease the mortgaged property after the establishing of the mortgage agreement, the lease may not be maintained against the registered right of mortgage.

#### Article 191:

In cases where mortgagors transfer mortgaged property with the consent of the mortgagees concerned during the period of the mortgage agreement, the proceeds that accrue to mortgagors from the transference of the mortgaged property are to be used to settle the claims secured by the mortgagees or they are to be deposited with third parties as agreed on by the mortgagors and mortgagees. In cases where the proceeds exceed the claims at issue, the balance is to belong to the mortgagors; whereas in cases where the proceeds do not cover the claims, the difference is to be paid by the debtor parties.

Mortgagors may not transfer mortgaged property without the consent of mortgagees during the period set for the mortgage, save where the transferees pay off the relevant debts on behalf of the mortgagors and the right of mortgage lapses.

#### Article 192:

The right of mortgage is not to be separated from the rights of creditor parties and transferred on an individual basis; and nor may it be used to secure the rights of other creditors. In cases where the rights of creditors are transferred, the right of mortgage is to be transferred at the same time, unless otherwise stipulated in the laws or agreed to by the parties concerned.

#### Article 193:

In cases where the acts of mortgagors are likely to cause a diminution in the value of the mortgaged property, the mortgagees concerned are entitled to demand that the mortgagors desist from such acts. In cases where the value of the mortgaged property has decreased, the mortgagees are entitled to demand that the mortgagors concerned restore the mortgaged property to its original value, or to provide securities corresponding to the amount of the lost value. In the event that mortgagors fail to restore the original value of the mortgaged property and fail to provide security, the mortgagees are entitled to request mortgagors to settle the claims in advance.

#### Article 194:

Mortgagees may waive the rights of mortgage or their relative priority. Mortgagors and

mortgagees may change the priority of mortgage rights and the amount of mortgaged debt through their agreement, provided that such alterations do not have negative consequences for other mortgagees and the latter record their written consent to the alterations.

In cases where debtor parties provide the guarantee of mortgage with their own property, then if the mortgagees concerned waive the right of mortgage or its relative priority, or change the mortgage right, the guarantors are to be relieved of their suretyship liabilities as in relation to the extent that the mortgagees relinquish their relative priority as to the satisfaction of their claim, unless other parties undertake to provide a guarantee.

#### Article 195:

Mortgagees who are not paid out on the coming of mortgage obligations to maturity may, through the agreement with the mortgagors concerned, be paid from the proceeds from the conversion of the mortgaged property into money or from its auction or sale. Other creditor parties may request the People's Courts to cancel such agreements within one year after they have come to know, or should have known, the grounds for such cancellation in conditions where the interests of such creditors are adversely affected.

In cases where mortgagors and mortgagees fail to conclude an appropriate agreement, the mortgagees may bring a civil action through the People's Courts.

The market price is to stand as the point of reference for the purposes of the conversion of mortgaged property into money, or for its sale.

#### Article 196:

In regard to rights of mortgage of the category provided for in Article 181 of this Law, the mortgaged property concerned will revert to the mortgagees in the following circumstances:

- i. The claims of the mortgagees are not satisfied through the payment of what is due on the coming of the mortgage obligations to maturity.
- ii. The bankruptcy or dissolution of the mortgagor.
- iii. Other circumstances adversely affecting the enforcement of the rights of mortgage.
- iv. Other circumstances adversely affecting the enforcement of mortgage claims.



Article 197:

If mortgaged property is seized by the People's Courts on account of the failure of debtor parties to fulfil their mortgage payment obligations or because the mortgage debt matures and falls due, the mortgagees, from the date of seizure, are to be entitled to collect the natural profits from the mortgaged property and the lawful profits due to the mortgagors. In cases where mortgagees fail to notify the parties with the obligation to pay lawful profits as to the seizure of the mortgaged property, the mortgagees are not to be entitled to collect the said profits.

The profits referred to in the above paragraph are to be used to cover the costs of the collection of the profits.

Article 198:

In cases where the proceeds from the auction and sale of mortgaged property exceed the claims of mortgagees, the balance is to belong to the mortgagor; if the proceeds do not meet the claims of mortgagees, the difference is to be paid by the debtor parties.

Article 199:

In cases where a single property is mortgaged in relation to two or more creditors, the proceeds from the auction or sale of the mortgaged property concerned are to be used for the purposes of liquidation in accordance with the following provisions:

- i. With mortgage contracts that become effective upon their registration, liquidations are to be made in the order of the registration of the mortgaged property; if registrations are simultaneous with mortgage contracts, the liquidations are to be made as relative to the respective extent of the different claims.
- ii. The claims secured through registered mortgages are to be satisfied prior to claims secured through unregistered mortgages.
- iii. The liquidation of unregistered mortgages is to be effected as relative to the respective extent of the different claims.

Article 200:

In cases where the right to the use of land for construction is mortgaged, the houses

newly built on the land are not themselves mortgaged property. In cases where it is necessary to auction the mortgaged right to the use of land for construction, the newly built houses on the land may be disposed of, together with the mortgaged property, as according to law, but with mortgagees having no right to have their claims satisfied on a priority basis with the proceeds from the newly built houses.

**Article 201:**

In cases where the right to the use of land is mortgaged as per the terms of Article 180, Section iii, or the right to the use of land as occupied by the factories and other infrastructure of townships or village enterprises is mortgaged as per the terms of Article 183, the collective ownership and the designated uses of the land may not be altered without the prescribed legal procedures as following the enforcement of the mortgage rights concerned.

**Article 202:**

The holders of security rights are to enforce the said rights on the expiry of the prescribed period for litigation. If the holders of security rights fail to enforce their rights within the due period, the rights are not to be protected by the People's Courts.

**Section 2: Maximum Amount Mortgage Rights**

**Article 203:**

In cases where debtor parties or third parties provide a guarantee regarding mortgaged property for the claim to be satisfied within a given period of time, and these parties fail to fulfil their obligations, the mortgagees are to have priority as to the satisfaction of their claims in relation to the maximum extent of the claims.

In cases where claims exist before the establishment of maximum amount mortgage rights, these may be converted into the debt secured by the maximum amount mortgage as subject to the agreement of the parties.

**Article 204:**

In cases where one part of a claim is transferred prior to the claim secured by the maximum amount mortgage being determined, the maximum amount mortgage right may

not be transferred unless otherwise agreed by the parties.

#### Article 205:

Before the determination of claims secured by maximum amount mortgages, the mortgagors and mortgagees concerned may change the terms, extent and maximum amount of the claims through agreement, as provided that such changes do not carry with them any negative consequences for other mortgagees.

#### Article 206:

The claims of mortgagees are to be determined as in reference to the following circumstances:

- i. The agreed period for the determination of claims expires.
- ii. In the absence of an explicit agreement as to the period of the claim, the mortgagor or mortgagee request a determination of the claim on the expiry of two years as from the date of the creation of the maximum amount mortgage right.
- iii. No new claims are to be established.
- iv. The mortgaged property is sealed up or made subject to a distraint order.
- v. The bankruptcy or termination of the mortgagor parties or debtor parties.
- vi. Other circumstances as stipulated in the laws as for the determination of claims.

#### Article 207:

The provisions on maximum amount mortgage rights set out in this section are to apply to the provisions set out in Section 1 of the present Chapter of this Law.

### Chapter 17: Pledge Rights

#### Section 1: Pledges as to Movable Property

#### Article 208:

Debtor parties and third parties may transfer the possession of their movable property to creditor parties as a pledged security for debts. If the debtor parties default, the creditor parties are to be entitled to priority in having their claims satisfied as in regard to the proceeds of the auction or sale of the movable property concerned.

The debtor parties and the third parties referred to in the above paragraph stand as the pledger parties, whereas the creditor parties stand as the pledgee parties. The movable property at issue is to stand as the pledged property.

Article 209:

Movable property that is prohibited from being transferred according to the relevant laws and administrative regulations is not to be used as pledged security for debts.

Article 210:

Pledgers and pledgees are to conclude written contracts of pledge.

A contract of pledge is to include the following elements:

- i. The form and the amount of the principal debt that is to be secured.
- ii. The time limit for the debtor to discharge his obligations.
- iii. The name, quantity, quality and condition of the pledged property.
- iv. The scope of the pledge guarantee.
- v. The time scale for the delivery of the pledged property.

Article 211:

Pledgers and pledgees are not permitted to stipulate in their contracts of pledge that the ownership of the pledged property is to be transferred to the pledgees if the obligation is not discharged on its falling due.

Article 212:

Pledges are to become effective upon the delivery of the pledged property.

Article 213:

Pledgees are to be entitled to collect the profits derivable from the pledged property, unless otherwise provided for in the contracts of pledge concerned.

The profits as referred to in the above paragraph are in the first instance to be used to pay the costs involved in the collection of the said profits.

**Article 214:**

During the period that pledges are effective, pledgees are to be subject to liability under civil law for any losses arising from the use, leasing or disposal of the pledged property.

**Article 215:**

Pledgees are to be subject to the obligation to maintain pledged property in good condition. They are also to be held liable under civil law for the loss, damage or destruction of the pledged property as resulting from their negligence while it is in storage.

In cases where pledgees are unable to maintain pledged property in good condition and may thereby cause loss, damage or destruction as to the pledged property, the pledgers concerned may demand that the pledgees should have the pledged property deposited with third parties, or demand that their obligations should be discharged in advance and the pledged property returned.

**Article 216:**

In cases where there is the risk of the pledged property perishing or undergoing a diminution in its value, the pledgees may require the pledgers concerned to provide additional security to a corresponding amount. In cases where pledgers refuse to provide such additional security, the pledgees may auction or sell the pledged property, and enter into an agreement with the pledgers concerned that the proceeds from auctions or sales are to be used to make an advanced payment of the secured debts at issue or to be deposited with third parties as agreed to with the pledgers.

**Article 217:**

During the period that pledges are effective, the pledgees may with the consent of pledgers transfer the right of pledge at issue. However, the pledgees are to bear liability under civil law for any loss, damage or destruction caused to the pledged property.

**Article 218:**

Pledgees may cancel the right of pledge. In cases where debtor parties pledge their own property and the pledgees cancel the right of pledge, then other guarantor parties may be

exempted from their liabilities to the extent that the pledgees would have priority in satisfying their claims from the proceeds of auction or sale, unless such other guarantor parties have made a commitment to providing security.

Article 219:

In cases where the debtor parties discharge their obligations on these coming to maturity, or where the pledgers make due payment prior to this, the pledgees concerned are to return the pledged property.

In cases where pledgees are not paid on the occasion of the maturing of the pledger obligations, they may enter into agreement with the pledgers that the pledged property concerned should be converted into money in order to discharge the debt, or they may assert their priority as to having their claims satisfied through the proceeds of the auction or sale of the pledged property.

The market price is to be adopted as the point of reference for the conversion of the pledged property into money or for the auction or sale of the pledged property.

Article 220:

Pledgers may request pledgees to enforce the right of pledge within a due time limit. In cases where pledgees fail to do so, the pledgers may request the People's Courts to conduct the auction or sale of the pledged property.

In cases where pledgers request the pledgees to enforce the right of pledge within a due time limit, the pledgees concerned are to compensate for any losses arising from the delay in the enforcing of the right.

Article 221:

In cases where the money converted from the pledged property or the proceeds from the auction or sale of the pledged property exceed the amount of the secured debt at issue, the balance is to be paid to pledgers. In cases where the money or the proceeds concerned do not cover the secured debt in its entirety, the difference is to be paid by the debtor parties.

Article 222:

Pledgers and pledgees may by mutual agreement set a maximum amount pledge.

The provisions on maximum amount mortgages as set out in Chapter 16, Section 2 of this Law are to have application to maximum amount pledges.

Section 2: Pledge Rights

Article 223:

Debtor parties and third parties may pledge the following forms of property as subject to their rights:

- i. Bills of exchange, cheques, and promissory notes.
- ii. Bonds and certificates of deposit.
- iii. Warehouse receipts and bills of lading.
- iv. Shares and stock certificates that are transferable.
- v. The rights to the exclusive use of trademarks, patent rights and copyrights which are legally transferable.
- vi. The right to collect fees for the use of roads and power grid infrastructure.
- vii. Other rights that may be pledged as according to the laws and administrative regulations.

Article 224:

In cases where bills of exchange, cheques, promissory notes, bonds, certificates of deposit, warehouse receipts or bills of lading are pledged, the pledgers and the pledgees concerned are to conclude a contract of pledge in written form, and with the documents confirming title at issue being effective upon their delivery to the pledgees.

Article 225:

In cases where bills of exchange, cheques, promissory notes, bonds, certificates of deposit, warehouse receipts or bills of lading, which carry the date of payment or the date of delivery of goods, are pledged and the date of payment or the date of delivery of goods is prior to the set time limit for the discharging of the due obligation, the pledgees concerned may be paid or accept the delivery of the goods, and then form an agreement with the pledgers that the payment or the delivered goods should be used to pay the secured debt in

advance or be deposited with third parties as agreed to with the pledgers.

Article 226:

In cases where portions of funds or shares are pledged, the pledgers and the pledgees concerned are to conclude a contract of pledge in written form. In cases where portions of funds or shares that have been registered with the relevant registration authorities are pledged, the right of pledge is to become effective upon registration with the securities registration and settlement authorities. In cases where the shares of any other kind are pledged, the right of pledge is to become effective upon registration with the administrative authority responsible for commerce.

The portions of funds or shares pledged may not be transferred, unless agreed to by the pledgers and pledgees concerned. The proceeds derived by the pledgers from the transfer of the portions of funds and shares are to be used to pay in advance the secured claims of the pledgees, or they may be deposited with third parties.

Articles 227:

In cases where the right to the use of trademarks, patents and copyrights are pledged, the pledgers and the pledgees are to conclude a written contract. The right of pledge is to become effective upon registration with the administrative authority responsible for commerce.

In cases where the property rights to do with trademarks, patents and copyrights, as referred to in the above paragraph, are pledged, the pledgers may not transfer the said rights or permit them to be used by other parties, unless agreed to by the pledgers and pledgees concerned. The proceeds from the transfer of the licence of use obtained by the pledger are to be used to pay in advance the secured claims of pledgees, or they are to be deposited with third parties.

Article 228:

In cases where the right of collecting fees is pledged, the pledgers and the pledgees are to conclude a contract in written form and the right of pledge is to become effective upon its registration with the competent administrative authority.



The right of fee collection, once pledged, is not to be transferred unless agreed to by the pledgers and pledgees concerned. The proceeds from the transfer of the right are to be used to pay in advance the secured claims of the pledgees, or to be deposited with third parties.

Article 229:

The provisions on the pledging of rights set out in this section are to apply to the provisions set out in Section 1 of the present Chapter of this Law.

Chapter 18: Liens

Article 230:

In cases where debtor parties default as to their debts, the creditor parties are to be entitled to retain movable property through lawful possession, and to have priority as to the discharging of the debts with the money converted from the property or the proceeds from the auction or sale of the property.

The creditor parties referred to in the above paragraph are to stand as the lien holders and the movable property possessed is to stand as the retained property.

Article 231:

Retained movable property is to be comprehended within the scope of the rights of creditors, save in the case of the retention of the movable property as between industrial enterprises.

Article 232:

In cases where property is not to be retained in accordance with the applicable laws, such laws are to prevail. In cases where the property is not to be retained as according to the terms of agreements between the parties concerned, such agreements are to prevail.

Article 233:

In cases where retained property is capable of being divided up, the total amount of the retained property is to be equal to the value of the debts involved.

Article 234:

Lien holders are to be subject to an obligation to maintain the retained property in good condition. Lien holders are to assume liability under civil law for the loss, damage or destruction of the retained property as resulting from their negligence.

Article 235:

Lien holders are to be entitled to collect the profits derived from the retained property.

The profits as referred to in the above paragraph shall in the first instance be used to pay the expenses involved in the collection of profits.

Article 236:

Lien holders and debtor parties are to enter into an agreement as to the time limit for the discharging by the debtor parties of their obligations subsequent to the retention of the property concerned. In the absence of any such explicit agreement, the lien holders are to allow for a time limit of two months or more for the debtor parties as to the discharging of their obligations, except where the property concerned is livestock or perishable stock. In cases where debtor parties default within the specified time limit, the lien holders may convert the retained property into money subject to agreement with the debtor parties, or they may claim priority as to the discharging of the debt with the money converted from the property or with the proceeds from the auction or sale of the property.

The market price is to be adopted as the point of reference for the conversion of the retained property into money or for the auction or sale of the retained property.

Article 237:

Debtor parties may request lien holders to enforce the right of lien within an appropriate time limit. In cases where the lien holders fail to do so, the debtor parties may request the People's Courts to authorize the auction or sale of the retained property.

Article 238:

In cases where money converted from retained property or proceeds from its auction or sale exceed the amount of the secured debt, the balance is to be paid to the debtor parties; in

cases where the money or the proceeds do not cover the secured debt in its entirety, the difference is to be made good by the debtor parties.

**Article 239:**

In cases where movable property that has been mortgaged or pledged is retained at a later time, the lien holders are to have priority as to the discharging of the debt concerned with the money converted from the retained property or the proceeds from the auction or sale of the retained property.

**Article 240:**

In cases where the lien holders lose possession of the retained property, or they accept other securities from the debtor parties, the right of retention is to lapse.

## **PART 5: POSSESSION**

### **Chapter 19: Possession**

**Article 241:**

In the case of possession arising from contractual agreements, the use of, the benefits from, and the liabilities for the real property or movable property concerned are to be subject to the terms of the contracts concerned. In the absence of contracts, or in the event of their having ambiguous terms and conditions, the relevant laws are to have application.

**Article 242:**

In cases where parties in possession cause damage to the real property or movable property at issue through their use thereof, the possessors at fault are to bear liability for the payment of compensation.

**Article 243:**

In cases where real property or movable property is made subject to possession, the relevant right holders may request the return of the original property with any profits arising therefrom. Legitimate possessors may deduct the necessary expenses for the maintenance of

such property.

**Article 244:**

In cases where real property or movable property is damaged or lost and the right holders concerned demand compensation, the possessor parties are to return the insurance money, the damages or any compensation fees to the right holders. In cases where the losses are not fully recovered through compensatory monies, the possessor parties at fault are to make up for the discrepancies save to the extent that they were not at fault with regard to the occurrence of the damage and loss.

**Article 245:**

In cases where real property or movable property is seized through the use of force, the possessor parties shall have the right to require the return of the property concerned. In the event of the possession of the property being obstructed, the possessor parties are to have the right to eliminate the obstruction. In the event of any damage arising from the seizure or obstruction, the possessor parties are to have the right to compensation.

The right of demand as to the return of the original property is to lapse if the possessor parties have not exercised their right within one year of the date of seizure.

## **SUPPLEMENTARY PROVISIONS**

**Article 246:**

Prior to the promulgation of applicable laws and administrative regulations as to the scope of the registration of real property, the registration authorities, and the due registration procedures, then relevant regulations may be formulated in reference to this Law by the Local People's Congresses and their Standing Committees.

**Article 247:**

This Law is to take effect as of 1 October 2007.